

REMARKS

Claims 10-13 and 20-23 are pending in the application, claims 1-9 and 14-19 being canceled and claims 20-23 being newly added herein. Claims 10 and 20 are the only independent claims. Claims 1-9 and 15-19 are canceled without prejudice to resubmitting those claims in a subsequent divisional application.

Claims 10-13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over applicants prior Patent No. 5,807,599 ("the '599 patent"). The Examiner specifically maintains in part that claim 10 is unpatentable over the '599 patent because that patent discloses use of a syringe to fill a hollow food product and that it would be obvious to one of ordinary skill in the art to fill the syringe by manipulating the syringe to move an open end thereof along a quantity of flowable comestible material. The Examiner maintains further that the using of the syringe to fill the product would require only routine practice to obtain the most efficient filling technique.

Applicants respectfully disagree with the Examiner on this point and request reconsideration of the rejection of claim 10. Applicants submit that there are many ways of filling a hollow tubular member with a flowable material in preparation for a forcible ejection of the flowable material from the tubular member. Applicants' method is not considered obvious in view of the other, more likely, alternatives. Such alternatives include introducing flowable material into the hollow tube with a spoon or spatula. A further alternative is to use a pressurized hose. The hose may be attached to a reservoir in the form of a bag or other flexible container that is squeezed manually or by a machine. Another alternative is to use a hopper provided with a downwardly extending nozzle equipped with a manually or automatically operable valve. The hopper may be pressurized by a fluid such as air or by a movable mechanical member such as a

worm screw or a vane pump. Yet another method of providing filled syringes includes extruding or otherwise shaping logs of flowable (but sticky) material that are wrapped with polymeric sheets that are in turn closed by adhesive, elastic bands, etc.

The Examiner maintains that applicants' method is the most efficient. But that is evidently not the case. It would be more efficient to use a squeezable bag, or a hose or hopper as described above. Thus, applicants' method is not obvious in view of the teachings and implications of the '599 patent.

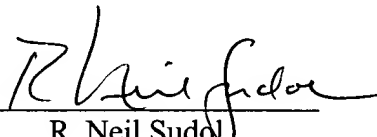
New claim 20 is essentially claim 14 rewritten in independent form. Claim 20 is deemed to be patentable pursuant to the Examiner's indication that claim 14 contained allowable subject matter.

For the foregoing reasons, it is respectfully submitted that independent claims 10 and 20, as well as the claims dependent therefrom, distinguish over the art and are in condition for allowance. An early notice to that effect is earnestly solicited.

Should the Examiner believe that direct contact with applicant's attorney would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the number below.

Respectfully submitted,
COLEMAN SUDOL SAPONE, P.C.

Dated: October 30, 2003

By: 
R. Neil Sudol
Reg. No. 31,669

714 Colorado Avenue
Bridgeport, CT 06605-1601
(203) 366-3560